

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 784 OF 2004
IN
FIRST APPEAL (ST) NO. 5828 OF 2004**

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

Ms. Maya Sadhwani for the
Appellant/New India Assurance Company.

**CORAM: A.S. OKA, J.
DATE : 27th August, 2004.**

P.C.:-

1. Heard learned counsel appearing for the Applicant. This application is filed by the Appellant New India Assurance Company for condonation of delay in preferring the Appeal. When this application was on board on 25th January, 2004 I noticed that the First Appeal preferred by the Appellant New India Assurance Company may not be maintainable. Therefore I granted time of three weeks to the Advocate appearing for the Appellant New India Assurance Company to satisfy me as to how the First Appeal is maintainable. It was brought to the notice of the Advocate

appearing for New India Assurance Company that the Appeal was not maintainable as admittedly the Appellant Insurance Company had not raised any defence before the Tribunal which is covered by Section 149(2) (a) of the Motor Vehicles Act, 1988 and that no application was made by the Appellant Insurance company under section 170 of the said Act of 1988 for obtaining leave to defend the claim on behalf of the insured. I granted further time to the Advocate appearing for the Appellant on 30th July 2004 and 13th August 2004 to ascertain whether any Application was made by the Appellant seeking permission to contest the claim on the grounds available to the insured.

2. Today when the matter is called out, the learned Counsel appearing for

the Appellant stated that no defence under section 149 (2)(a) of the said Act of 1988 was raised by the Appellant company and an application for seeking permission under Section 170 was not made. Reliance was placed on Judgement of Karnataka High Court 2004 ACJ 1162 (Oriental Insurance Co. Ltd and Anr.

vs. Yadava Sanil) to contend that the Appeal was maintainable. In view of the law laid down by the Apex Court in the Judgments reported in (2002)7 SCC page 456 (National Insurance Co. Ltd v/s. Nocolletta Rohalgi & Ors) and (2003)3 SCC page 524 (Sadhana Lodha and National Insurance Co. and another) it is clear that the Appeal filed by the Appellant Assurance Company is not maintainable.

3. The learned Counsel appearing for the Appellant tendered on record an Affidavit of one Chandrashekar Dattatraya Aiyar, Advocate who allegedly appeared for the Appellant Insurance Company before the Tribunal. In the said Affidavit the said Advocate has stated that due to oversight he did not apply under Section 170 of the said Act of 1988 for contesting the claim on all grounds which are available to the Insured. The learned counsel for the Appellant submitted that for the default on the part of the Advocate, the Appellant Company should be allowed to suffer. However, I am unable to accept the said contention for the simple reason that it is not the case of the

Appellant Insurance Company that any authorised Officer of the Assurance company instructed the Advocate concerned to apply for leave and thereafter the advocate failed to apply for leave. It is unfortunate that the entire blame is sought to be shifted on the Advocate who is appearing for the Insurance Company in the Trial Court. The learned counsel for the Appellant submitted that in a meeting held by higher officers of the Appellant Insurance Company, a general direction was given to all advocates appearing for the Insurance Company to apply for leave under Section 170 of the said Act of 1988 in the Accident claims. Firstly nothing is placed on record to show that such general directions was given though time was repeatedly granted to the Appellant Company from 25th June, 2004. Secondly, even assuming for a moment that such an meeting was held, it is not sufficient to come to the conclusion that in the specific case before me, such an instruction was given to the concerned Advocate.

4. In view of the law laid down by the Apex Court, the Appeal preferred by

the Appellant Insurance Company is not maintainable. If the Appeal is not maintainable no purpose will be served by issuing notice on application for condonation of delay. Hence the Application for condonation of delay is dismissed. No orders as to costs.

Sd/-

JUDGE